

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: JANUARY 6, 2003

FROM: JAMES M. RODDY, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6: Confirmation of Exemption from Government Code Section 56133 for Water and Sewer Service from the City Redlands to the Donut Hole area

RECOMMEDATION:

1. Confirm that the provision of water and sewer service from the City of Redlands in the "Donut Hole" area is exempt from the requirements of Government Code Section 56133, on the basis that the provision and availability of those services pre-existed enactment of that section;
2. Determine that the City of Redlands shall indemnify, defend, and hold harmless the Local Agency Formation Commission of the County of San Bernardino from any legal expense, legal action, or judgment arising out of the Commission's action on this matter, including any reimbursement of legal fees and costs incurred by the Commission.
3. Adopt LAFCO Resolution #2765 setting forth the Commission's findings and determinations on this issue.

BACKGROUND INFORMATION:

Government Code Section 56133 took effect on January 1, 1994, and reads in part: "A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission [LAFCO] in the affected county." This section does not apply, however, to services that a city or district was providing on or before January 1, 2001.

Attached for Commission review is a letter from the Redlands City Attorney requesting the Commission to confirm that its provision of water and sewer services within the Donut Hole is exempt from the requirements of Section 56133 on the basis the city was providing those services within the area prior to January 1, 2001 (the section was recently amended to extend the exemption date). In addition, a letter from Mr. John Mirau, the attorney representing Redlands Joint Venture (Majestic) and the United Donut Hole Owners Property Association (UDHOPA) is attached for Commission review.

After many years of discord between the City and the landowners in the area, the Commission will be pleased to read in those letters that an accord has been reached among the parties. This agreement is a major accomplishment in allowing the City to provide service to present and future development in the area.

The key question is whether or not the extension of the City's water and sewer services is exempt from the review requirements specified in Section 56133. The City Attorney and the landowners' attorney take the position that such services are exempt; others will present opposing positions at the hearing.

Staff has reviewed this matter with Mr. Jeff Goldfarb, the Commission's special Legal Counsel. The law is unclear, it provides no definitions, and it is open to conflicting interpretations. Thus, further legal review of this question will continue between the date of this report and the hearing.

In the meantime, staff believes that a reasonable argument can be made for the Commission to confirm that such services are exempt in the Donut Hole area.

In the attached letters, extensive information has been provided to show that the City of Redlands has provided water and sewer service to the area for many years. Further, the area has been included within the City's water and sewer master plans, and an extensive investment in infrastructure improvements has been made by the City.

Beyond that, given the unclear language of Section 56133, the Commission should also focus on its goals for orderly development and efficient extensions of service. The purpose of Section 56133 is to provide the Commission with a tool to discourage leap-frog development, and in this specific case, there is no potential for such disorderly development to occur.

In fact, the service extensions will promote logical development, they will provide the most efficient and orderly services possible, and they will

enhance the potential for logical future annexations. In addition, and most importantly, for the first time in a decade, there is a positive dialogue between the City and the landowners in the area which can, over time, lead to eventual annexation of the entire Donut Hole.

Unless LAFCO Counsel advises at the hearing that the requirements of Section 56133 must be applicable in this case, staff will recommend that the exemptions requested by the City and the landowners be authorized.

Attachments:

1. Letter from City of Redlands City Attorney
2. Letter from John Mirau, attorney for landowners
3. Draft Resolution #2765